



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** EPS Incorporated

**File:** B-258847

**Date:** November 8, 1994

### DECISION

EPS Incorporated protests the award of a contract to Maden Tech Consulting, Inc., under request for proposals (RFP) No. DAAB07-93-R-B258, issued by the Army for integration and systems engineering services for the Space and Terrestrial Communications Directorate.

We dismiss the protest.

The RFP was issued as a total small business set-aside and required the submission of technical and price proposals. The RFP provided that technical proposals would be evaluated under the following four factors, listed in descending order of importance: Technical, Past Performance Risk, Cost, and Management. The RFP emphasized that the Technical factor was the most important criterion and further advised offerors that this factor was comprised of three subfactors which would be evaluated in the following descending order of importance: (1) Sample Tasks; (2) Personnel; and (3) Facilities. The solicitation provided that contract award would be made on a "best value" basis.

After the initial evaluation of proposals, eight offerors were included in the competitive range; after best and final offers had been evaluated, the final evaluation results were as follows:

<u>Offeror</u>	<u>Technical Factor</u>	<u>Past Perf. Risk Factor</u>	<u>Cost Factor</u>	<u>Management Factor</u>
Sonex	Good	Low Risk	\$20,676,185	Good
Maden Tech	Good	Low Risk	\$21,210,536	Good
Offeror A	Acceptable	Low Risk	\$18,039,132	Good
Offeror B	Acceptable	Low Risk	\$18,053,076	Good
Offeror C	Acceptable	Low Risk	\$19,396,134	Good
Offeror D	Acceptable	Moderate	\$17,836,092	Good
EPS	Acceptable	Moderate	\$22,180,926	Good
Offeror E	Acceptable	Moderate	\$23,548,773	Good

With respect to each offeror's Technical factor grade, this rating was the result of the consolidation of the following subfactor scores:

<u>Offeror</u>	<u>Sample Tasks</u>	<u>Personnel</u>	<u>Facilities</u>
Sonex	Outstanding	Acceptable	Good
Maden Tech	Outstanding	Acceptable	Good
Offeror A	Acceptable	Good	Good
Offeror B	Good	Acceptable	Good
Offeror C	Acceptable	Good	Good
Offeror D	Good	Acceptable	Good
EPS	Acceptable	Acceptable	Acceptable
Offeror E	Acceptable	Acceptable	Good

On September 15, 1994, shortly after learning from the Small Business Administration that Sonex was not a small business concern, the Army awarded a contract to Maden Tech as the "best value" offeror. On September 29, the Army conducted a debriefing for EPS; on October 7, EPS filed this protest with our Office.

In its protest, EPS raises only two contentions: that its proposal was improperly evaluated under the Past Performance Risk technical factor, and that its proposal was improperly downgraded based on its personnel.<sup>1</sup> According to EPS, the Army improperly assigned EPS' proposal a "Moderate"--instead of "Low"--performance risk due to evidence that the Navy had terminated EPS for default on a 1989 satellite production contract. The record shows that the Navy's termination of EPS' contract was recently overturned by the Armed Services Board of Contract Appeals (ASBCA) based on the ASBCA's determination that the default determination was invalid; consequently, EPS now argues that this prior contract termination provides no basis for the "Moderate" grade it was awarded under the Past Performance Risk factor. EPS further argues that but for the agency's reliance on the satellite contract termination, EPS' proposal would have received a higher rating than "Acceptable" under the Personnel technical subfactor.

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<sup>1</sup>In its response to the agency's motion to dismiss, EPS suggests that its protest challenged other unspecified aspects of the technical evaluation. Any general statements in the protest to the effect that the agency's evaluation of past performance "tainted critical aspects" of the technical evaluation are not sufficient to constitute a challenge to the evaluation, particularly given that EPS received a detailed debriefing before the protest was filed and therefore was in a position to point out specific aspects of the evaluation which it believed were improper.

Under the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective contractor whose direct economic interest would be adversely affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1994). Determining whether a party is sufficiently interested involves consideration of that party's status in relation to the procurement; where there is another party that has a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our regulations. See RC 27th Ave. Corp.--Recon., B-246727.2, May 20, 1992, 92-1 CPD ¶ 455.

While EPS argues that its offer was improperly downgraded based on its proposed personnel, the protester has failed to show how this alleged evaluation error affected its overall Technical factor score. As noted above, the Personnel subfactor was only one of three Technical subfactors, and was less important than the Sample Tasks subfactor. Even if EPS' score for the Personnel subfactor were increased to the highest possible rating of "Outstanding," there is no evidence in the record--nor does the protester suggest--that such an increase would result in a change to EPS' overall Technical rating of "Acceptable," given the scores EPS' proposal received on the other two subfactors.<sup>2</sup>

Since there is no basis to conclude that the protester's overall "Acceptable" rating for the Technical factor would change even if its protest against the personnel subfactor evaluation were sustained, the protester still would not be in line for award even if we were to sustain EPS' additional challenge to its Past Performance Risk evaluation. That is, even increasing EPS' Past Performance Risk rating to "Low," four firms would precede the protester in eligibility for award. The awardee, Maden Tech, not only is the only offeror with a "good" technical rating--the highest technical score awarded--but its price is lower than the protester's. Even if Maden Tech were eliminated from the competition, EPS still would not be in line for award since it is equally technically ranked, but higher priced, than the remaining three offerors.

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<sup>2</sup>As noted above, EPS's proposal received ratings of "Acceptable" in both the Facilities subfactor and the "Sample Tasks" subfactor, the most important of the three subfactors.

Under these circumstances, since the protester would not be in line for award even if its protest were sustained, we find that EPS is not an interested party within the meaning of our Regulations to maintain this protest. See Negotiations Int'l Ltd., B-242374, Mar. 26, 1991, 91-1 CPD ¶ 329.

The protest is dismissed.

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